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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 11th February 2025

S.R.O. No. 141/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated 21st December 2024 passed in the I.D. Case No.15 of 2021 by the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Chairman-*cum*-Managing Director, M/s Mideast Integrated Steels Ltd., Kalinganagar Industrial Complex, Dist. Jajpur and the General Secretary, Mesco Steels 'Workers' Union, At. Managovindapur, Kalinganagar, P.O. Ranagadi, Dist. Jajpur, 2. The President, Kalinga Nagar Sramik Sangha, 3. The Secretary, Kalinga Nagar Mazdoor. (Second Party Union Nos. 2 and 3 were impleaded vide Order No.11 dated the 4th May 2022 of this Court) All are present At. Managovindapur, Kalinganagar, P.O. Danagadi, Dist. Jajpur was referred for adjudication is hereby published in the schedule below.

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 15 of 2021

Dated the 21st December 2024

Present :

Smt. Meenakashi Priyadrashinee,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Chairman-*cum*-Managing Director,
M/s Mideast Integrated Steels Ltd.,
Kalinganagar Industrial Complex,
Dist. Jajpur. . . First Party—Management

And

1. The General Secretary, . . Second Party—Unions
   Mesco Steels Workers' Union,
   At. Managovindapur,
   Kalinganagar, P.O. Danagadi,
   Dist. Jajpur.
2. The President,
   Kalinga Nagar Sramik Sangha.
3. The Secretary,
   Kalinga Nagar Mazdoor
   (Second Party Union Nos. 2 and 3 were impleaded
   vide Order No. 11, dated the 4th May 2022 of this Court)
   All are present At. Managovindapur, Kalinganagar,
   P.O. Danagadi, Dist. Jajpur.

Appearances :

Shri A. Singh & Associate Advocates	. .	For the 1st Party—Management
None	. .	For the Second Party—Union No.1
Shri S. K. Das & Associates, Advocates	. .	For the Second Party—Union Nos. 2 & 3

AWARD

The Government of Odisha in the Labour and E.S.I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (c) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') have referred the following dispute for adjudication by this Court vide their Memo No. 6918/ LESI, dated the 17th August 2021.

> "Whether the action of the management of M/s Mideast Integrated Steels Ltd., Kalinganagar Industrial Complex, Dist. Jajpur in notifying the suspension of work in their industry w.e.f. the 12th February 2020 'C' Shift indicating therein to adopt the principles of 'No work No Pay' for the period of suspension of work is legal and/or justified ? If not, to what relief the workmen are entitled ?

2. At the outest it is apt to mention here that the original second party union i.e., the Union No. 1 mentioned above neither filed his statement of claim despite direction of the appropriate Govt. nor participated during hearing of the case. The second party union Nos.2 and 3, however, after their addition as parties to the present case basing upon their respective petitions, have filed their claim statements separately with regard to the order of reference. But, ongoing through the statement of claims filed on behalf of the Union Nos. 2 and 3 through their respective President and Secretary, it appears that almost all the averments made therein are same.

Bereft of unnecessary details, the case of the second party Union Nos. 2 and 3 as emerge from their separate claim statement is that they are Trade Unions registered under. The Trade Union Act' having Registration Nos. CTC-686 and CTC-457 respectively and functioning in MESCO Branch. The aim and objects of the unions is to work for all round development of their members of MESCO Branch. So, the case of the unions espousing the cause of their members is that the management used to earn huge profit out of production and service rendered by the workers as well, but it did not pay the statutory dues viz., Bonus, PF etc. to its employees/ members of the

unions even though there were several discussion on several occasions made in between the management and the unions to that effect. The claim is advanced that despite their consistent demands the management neither paid their statutory dues nor paid their monthly wages so also other benefits. Rather, the management in order to harass the workers and to suppress the demands of the unions either, all of a sudden on the 12th February 2020 published a notice for 'suspension of work' from 'C' shift of the 12th February 2020 thereby ascribing certain false and baseless reasons. Vide such notice the management also adopted the principle of 'No Work No Pay'. Immediate thereafter, the workers had met the representatives/officers of the management, but they did not get any satisfactory reason of the suspension of work, rather they were forbidden to discharge their duties from 'C' shift of the 12th February 2020. According to the unions such notice for 'suspension of work' is lockout notice as per the definition of Section 2 (l) of the I.D. Act and the management having failed to comply the provisions of the I.D. Act, 1947 while declaring suspension of work by the above notice the same is neither legal nor justified. Consequently, the union No.1 raised a dispute before the concerned DLO for an amicable settlement which culminated into the present reference.

3. On receipt of notice, the first party management entered its appearance by filing written statement thereby challenging the maintainability of the present reference in the eye of law and facts. In addition to it, the management has also taken a stand that the appropriate Govt. while referring the present case in dispute has not verified any materials/documents showing existence of industrial dispute, for which the present reference is bad in law. On such counts the management, at the threshold, has prayed for the dismissal of the case. It is asserted by the management that during last five years it had incurred/faced huge loss. Apart from that the plant of the company was not functioned fully for certain period owing to want of Consent to Operate from the Govt. so also from other Licenses. However, there was approval to operate the Sinister Plant only. It is superficially contended by the management that it has applied for Consent to Operate the plant, but till date it has not been obtained CTO from the Govt. Meanwhile the tenure of Mineral License granted to the MISL Plant came to be expired on the 26th December 2019. As a consequence thereof the activities of MISL Plant have come to a standstill position. While the matter stood thus the workers not only stopped racks from railway siding but also resorted to abrupt work stoppage from the 21st January 2020 which occasioned the management to notify suspension of work of MISL with effect from the 12th February 2020, 'C' shift until further order thereby adopting 'No Work No Pay' principle. Further contention of the management is that on the 25th May 2022 i.e., during pendency of the present case, a meeting pertaining to the instant dispute in question was held under the Chairmanship of ADM, Kalinga Nagar in presence of IIC, Kalinga Nagar, P.S., authorities of the management, the Presidents and Secretaries of different unions and the meeting was ended with the following decisions :—

(i) the workers shall not demand wages for the period from the date of lifting of suspension of work till resumption of plant production;

(ii) the workers shall not obstruct railway siding operation;

(iii) the management has to pay *ex gratia* of Rs. 4,000 per month of June and July 2022;

(iv) the plant will restart its production soon after obtaining Consent to Operate and mineral trading license within six to eight months; and

(v) the workmen and their unions will not resort to any agitation till restart of plant production.

The management while carried out the decisions taken in the above meeting has also issued notice to all concerned about lifting of suspension of work, but the production of the plant has not yet been resumed due to want of Consent to Operate and Mineral Trading License. In the backgrounds, as afore stated, the management has asserted that the present claim of the unions is redundant and liable to be rejected.

4. The Union Nos. 1 and 2 filed their respective rejoinders to the WS of the management asserting therein, *inter alia* that the reference is very much maintainable. They are not aware if the management has applied for CTO or not. The Unions while admitted to have attended the meeting have categorically stated that owing to non-payment of dues, the State Govt. has not renewed Mineral Trade License and granted COT as well. It is alleged, the management has not taken any step to resume its function. So, the Unions have prayed to allow their claims.

5. Taking into consideration the pleadings advanced by the parties, the following issues have been settled for proper adjudication of the dispute.

ISSUES

(i) Whether the action of the management of M/s Mideast Integrated Steels Ltd. Kalinganagar Industrial Complex, Dist. Jajpur in notifying the suspension of work in their industry w.e.f. the 12th February 2020, 'C' shift indicating therein to adopt the principles of No Work No Pay for the period of suspension of work is legal and/or justified ?

(ii) Whether the proceeding is now redundant in view of the alleged settlement dated the 25th May 2022 ?

(iii) If not, to what other relief the workmen are entitled ?

6. Contesting parties have led evidence in shape of oral and documentary evidence in order to substantiate their respective cases. The 2nd Party Union No. 2 when adduced oral evidence with the help of two witnesses as WW Nos. 1 and 2 the Union No. 3 adduced oral evidence through one witness as WW No. 3 and Exts. 1 to 11 are marked on their behalf.

Per contra, the management has examined three numbers of witnesses on its behalf and placed reliance on seven numbers of documents which are marked as Exts. A and G respectively.

FINDINGS

7. *Issue Nos.(i to iii)*— These issues are taken-up for determination simultaneously being interlinked with each other.

Before going to discuss, if any, on the above issues, it is trite to mention here that the management in its WS set up a claim to the effect that the present reference is not maintainable on various grounds. But, in the matter of maintainability of the reference, it is pertinent to say that in the case of Nityananda Panigrahi *V.* General Manager (Mines) M/s Tata Iron and Steel Co. Ltd. and another: 2006 (Supp.-I) OLR 933, the Hon'ble Court has been pleased to held that "Reference-Validity/maintainability of Industrial Tribunal is a creation of statute and it gets jurisdiction on the basis of a reference-A tribunal cannot go into the question of validity of a reference".

In view of such clear position of law this Court has no jurisdiction to test the competency of the State Govt. to refer the present dispute.

It is borne out from the pleadings as well as evidence advanced by the parties in the present *lis* that w.e.f. the 12th February 2020 the management declared suspension of work of its factory/company vide notice dated the 12th February 2020 with 'No Work No Pay' principle, Ext. B and as a corollary thereof a meeting was held on the 25th May 2022 by the District Administration i.e., ADM, Kalinga Nagar in presence of the present Unions mentioned above, the representatives of the management, ALO, Jajpur Road, IIC, Kalinga Nagar Police Station and other unions.

But, it is not out of place to mention that there is no provision under the I.D. Act regarding 'suspension of work'. Rather, there are provisions regarding layoff, lockout and closure. The theoretical distinction between a closure and a lockout is well settled. In the case of a closure, the employer does not merely close down the place of business, but he opposes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself. It is to be noted that closure is a matter of policy of the employer, whether to run his business or not. The employer may close down an industrial activity *bona fide* on such eventualities as suffering continuous loss, no possibility of a revival of the business or an inability for various other reasons. The word closure means, perpetual, i.e. business can under no circumstances be revived till eternity.

In the present case, admittedly, the petitioner management declared suspension of work w.e.f. the 12th February 2020 and admittedly, the petitioner management has not resorted to termination of its employees. Therefore such suspension of work may be construed as lockout. It is therefore, becomes necessary to mention the definition of 'lockout' as incorporated in Section 2(l) of the I.D. Act. As per Section 2(l) of the Act, lockout means the [temporary closing of a place of employment] or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. Besides that, under the I.D. Act, "suspension of work" and "lockout" are essentially the same concept, meaning when an employer temporarily closes a workplace or refuses to continue employing workers effectively stopping work at the establishment; this is defined under Section 2(l) of the Act. "Suspension of work" can occur due to various factors beyond employer control like lack of raw materials, power outages, or natural calamities, while a "lockout" is always initiated by the employer as a deliberate tactic. A "suspension of work" might be temporary due to unavoidable circumstances with no intention to pressure employees, whereas a "lockout" is intended to exert pressure on employees to accept certain demands. While both can be subject to legal regulations under the I.D. Act, a "lockout" may face stricter penalties if deemed unjustified or used as a tool of coercion.

In view of such definition under the provisions of I.D. Act it can be inferred that there was lockout declared by the management in its factory and it termed as 'suspension of work'. Therefore, the suspension of work resorted by the management amounts to lockout.

On the face of above, now whether the lockout/suspension of work was rightly or wrongly declared by the management w.e.f. the 12th February 2020 is the bone of contention. In order to overcome the dispute in question this Court has to go through the evidence adduced orally as well as documentary by the parties in the instant case. On a common reading of the pleadings advanced by the parties, it is found that there is no serious dispute between the parties to the effect that the members attached to the present Unions are workmen and the management is an Industrial Establishment as per the provisions enumerated under I.D. Act, for which discussion further to that effect will be redundant. It also emerges from the case record that there were more than 100 employees working under the management. So, on that score, the management is also held to be

an industrial establishment. That apart, while the plea of the second party unions is that declaration of such suspension of work arose out of the fault of the management i.e., not complying the statutory deposits as well as other factors, the first party while resisting such assertion has taken the stand by referring Ext. B (xerox copy of notice of suspension of work) that due to want of Consent to Operate the plant from the Govt., expiry of mineral license tenure and stoppage of works by the workers from the 21st February 2020 so also racks from railway siding it has no other option than to notify Ext. B. Admittedly, except Ext. B, no other specific document is placed on behalf of the management with regard to the stoppage of works by the workers from the 21st February 2020 so also racks from railway siding. However, Ext. A (which is emerged as the xerox copy of proceeding of the meeting held on the 25th May 2022) give a clear presumption that the Unions wherein and whereupon agreed not to have obstructed railway siding operation. Now it is next to scan the cross-examinations of the management-witnesses i.e., MW Nos. 1 to 3. The cross-examinations of these three witnesses conclusively reveal that regarding renewal of Mineral Trading License a case is pending before Hon'ble Supreme Court and the management had not deposited the required funds as directed by the Hon'ble Court. The cross-examination of MW Nos. 1 to 3 when, read concurrently, it is further seen that the Govt. has not supplied the CTO to the management as it has not fulfilled the condition and that as the management is not permitting the present workers to discharge their duties under it the present workers are entitled to all the reliefs claimed by them. Besides that, Ext. 10 is a document (i.e., information obtained through RTI Act) wherein it has been mentioned that consent to operate in respect of M/s Mideast Integrated Steels Ltd., for the year 2020-21 had not been granted, as the Unit had not paid the environment dues charged by the Director of Mines, Govt. of Odisha based on the order of the Hon'ble Supreme Court of India for illegal mining of Roida-I of MESCO. From the discussion made above, it is found that both the management and the workers are jointly liable towards declaration of suspension of work.

What have been stated above it is also evincible from the pleading of the management that the alleged demand of the Unions is a stale claim' as per the decision taken in the meeting dated the 25th May 2022 mentioned above. In the case at hand, the management is armed with the copy of proceeding of meeting held on dated the 25th May 2022 which is figured/marked as Ext. A. Needless to say that the contesting Union No. 2 raised objection to Ext. A during its marking as exhibits on the ground that the members of the second party union No. 2 were not present in that meeting. But, surprisingly the second party union No.2 in its rejoinder at Para. 9 admitted to have taken part in the meeting dated the 25th May 2022. Therefore, the above ground taken by the second party Union at the time of marking of Ext. A is inconsequential. It is true that Ext. A shows a meeting on the issues pertaining to M/s Mesco Steel Ltd. raised by its various Unions was held on the 25th May 2022 (during pendency of the case) in the office chamber of ADM, Kalinga Nagar, but it is not found therefrom that any discussion as to the period from the 12th February 2020 (when suspension of work with 'No Work No Pay' was notified) to the 25th May 2022 (i.e., the proposal date of lifting of suspension of work with 'No Work No Pay') was made. Nonetheless the fact as reveals from Ext. A remains that the workmen coupled with their unions agreed not to demand wages for the period from the date of lifting of suspension of work till resumption of plant production and the management as per the representatives of the Unions also agreed to pay *ex gratia* @ Rs. 4000 per month to each workmen for the month of June & July, 2022. In the said meeting, it has also been discussed that when the 2nd railway siding will start, the management and workmen will sit and discuss the amount of *exgratia* to be paid. On this aspect, it is here argued by the learned counsel appearing for the management that the decisions taken in the meeting dated the 25th May

2022 have been carried out. In this regard looking to the documents marked vide Exts. C and F which are xerox copies of notices dated the 25th May 2022 of the management and calculation sheet towards payment of *ex gratia* to plant non-executives, it is found that the management pursuant to the meeting dated the 25th May 2022 lifted the notice for suspension of work dated the 12th December 2020 on the very day of meeting vide Ext. C and the management paid sum amount as *ex gratia* to its non-executive employees for 14 months from September, 2021 and March 2024 as evident from Ext. F. Ext. F has been marked without objection and from Ext. F it further reveals that *ex gratia* was paid to the non-executives for some moths of suspension period so also for some months during the pendency of the case. It is trite to mention here that the Unions when in one hand objected to Ext. C whereby the management lifted its notice of suspension of work dated the12th February 2020 as per the outcome of the meeting dated the 25th May 2022 on the other hand put a suggestion to the management-witness (MW No.2) during his cross-examination to the effect that after lifting of the suspension of work by the management the present workers are not allowed to work under it to which he categorically admitted. So, such suggestion of the Unions infers a presumption that the management has already lifted the suspension of work vide Ext. C. At this stage, at the cost of repetition it is profitable to reproduce the decision made vide point Nos. 3 & 5 in the meeting dated the 25th May 2022 which as follows:

"Considering the request of the workmen and their Unions, the management has agreed for lifting of suspension of work with 'No Work No Pay' w.e.f. today i.e., on the 25th May 2022 subject to a condition workmen will not claim their wages from the date of lifting of suspension of work till resumption of plant production as at present plant is not having CTO and mineral license. However, workmen will have mutual discussion with management after plant production regarding arrear of this period.

The Mesco Steel Plant will restart its production soon after obtaining Consent To Operate (CTO) and Mineral Trading License within 6-8 months".

But, the circumstance of the present case reveals that due to the fault of the management it yet to obtain CTO and Mineral Trading License; as admitted after lifting of the suspension of work by the management the present workers are not allowed to work under it and that no discussion was made over suspension period i.e., from the 12th February 2022 to 25th May 2022.

With regard to the circumstances of the present case reference can be made to the judgment of the Hon'ble Supreme Court in the case of Pradip Lamp Ltd. *Vrs.* Their Workmen, 1969 (38) FJR 20 (SC), wherein it was held that 'even if a lockout was not justified, if the workmen were also blameworthy and it was their conduct, which brought about the lockout, there should be apportionment of blame between the management and workmen and that the extent to which blame thereof is to be apportioned between the management and the workmen is a matter which is required to be considered by the Tribunal'.

In view of the discussion made above this Court is of considered view that both the management and the employees are to be equally blamed for the prolonged continuance of the suspension of work and therefore apportionment of the blame at 50 per cent each between the management and workers is seems justified. There is no material so show that the workers made themselves available to perform their duties and had requested the management to lift the suspension of work and though efforts made to bring about an amicable solution to the dispute. On the other hand, the management had made no efforts to call the unions for negotiations across the table and that there was no justification for continuing the suspension of work for such a long period i.e. from the 12th February 2020 to the 25th May 2022 (i.e., the proposal date of lifting of

suspension of work with 'No Work No Pay'). Even there was nothing on record to show that the management had taken any steps for avoiding such suspension of work/ lockout, as the management could have invoked the assistance of the conciliator or the Labour Officer in that regard and that even if the declaration of suspension of work from the 12th February 2020 is legal then also its continuation for such a long period to the 25th May 2022 could not be justified in the circumstances of the case. In matters relating to apportionment of blame between the management and the workers there can be no inflexible formula or rigid yardstick to determine the percentage of apportionment, and the extent of apportionment of blame would depend on the facts and circumstances of each case. Be that as it may, this Court feels it appropriate to apportion the blame at 50 per cent on the management.

This Court, accordingly while holding the action of the management in notifying the suspension of work in their industry w.e.f the 12th February 2020 'C' shift indicating therein to adopt the principles of 'No work No Pay' for the period of suspension of work is neither legal nor justified thinks it appropriate to direct the Management to pay 50% of wages/salary to the concerned workmen/ workers as per their last drawn salary from the 12th February 2020 (i.e., declaration date of suspension of work) to the 25th May 2022 (i.e., the date of lifting of suspension of work) for the above reason *vis-a-vis* for the reason that unions agreed no to demand wages for the period from the date of lifting of suspension of work till resumption of plant production as evident from Ext. A. The management is directed to comply the award within a period of two months of the date of publication of the award, failing which the amount' of 50% wages/salary as awarded in favour of the workmen/workers would carry a simple interest of 6% per annum till it is paid to them. The management is at liberty to adjust the amount, if any, paid to such concerned workers during the period from the 12th February 2020 to the 25th May 2022 towards their salary.

The application is disposed of accordingly.

Dictated and corrected by me.

MEENAKASHI PRIYADRASHINEE
21-12-2024
Presiding Officer,
Labour Court, Bhubaneswar

MEENAKASHI PRIYADRASHINEE
21-12-2024
Presiding Officer,
Labour Court, Bhubaneswar

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By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government

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